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10/661,684

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Brent Anderson

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12/04/2008

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EXAMINER

PASCUA, JES F

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/661,684

**Applicant(s)**

ANDERSON, BRENT

**Examiner**

Jes F. Pascua

**Art Unit**

3782

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,8-10,12,13,16-18,20,21 and 24-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8-10,12,13,16-18,20,21 and 24-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 October 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/16/2008 has been entered.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the facing side surface (73) of the front zipper profile being wider than the attaching side surface (68) as set forth in claims 28-30 must be shown or the feature canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 31-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 31-33, the specification fails to provide an adequate written description of the narrower of the attaching side surface of the front zipper profile and the attaching side surface of the back zipper profile and a corresponding portion of the other attaching side surface providing no air gap. Regarding claims 34-36, the specification fails to provide an adequate written

description of the side surfaces of the joined front and back zipper profiles taking the shape of an arrow.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 5, 13, 21, 26, 27 and 31-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 5, 13 and 21, the zippered closure has not been structurally set forth to provide antecedence for the language "the thickness direction".

In claim 26, "the edges of the front and back zipper profiles" lack antecedence.

In claims 31-33, the attaching sides surfaces of the front and back zipper profiles have not been set forth to warrant the language "the narrower of the attaching side surface of front zipper profile and the attaching side surface of the back zipper profile."

In claims 31-33, it is unclear what structure is referred to by the language "a corresponding portion of the other attaching side surface".

In claims 34-36, the recitation that “the side surfaces of the joined front back zipper profiles take the shape of an arrow” appears to contradict the recitation “substantially flat facing side surface” of the front zipper profile and the “upwardly facing side surface” of the back zipper profile flanges in the claims from which claims 34-36 depend.

Claims 34-36 are vague and confusing because it is unclear if “the side surfaces of the joined front and back zipper profiles” refer to the substantially flat facing side surface of the front zipper profile, the attaching side surface of the front zipper profile, the flat attaching side surface of the back zipper profile or the upwardly facing side surface of the flanges.

Claim 27 is rejected since it depend from a claim that has been rejected under 35 U.S.C. § 112, second paragraph.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 4, 9, 10, 12, 17, 18, 20, 25 and 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,167,597 to Malin. See Fig. 2F.

Malin discloses the claimed invention, especially the two flanges (72) having opposed lateral edges that extend upwardly and outwardly from the base and terminate in an upwardly facing side surface. However, it is unclear if a first distance measured along a line parallel to the base and connecting points of the opposed lateral edges is greater than a second distance measured between the opposed ends of the base. It would have been an obvious matter of design choice to extend the Malin flanges (72) upwardly and outwardly from the base such that a first distance measured along a line parallel to the base and connecting points of the opposed lateral edges would be greater than a second distance measured between the opposed ends of the base, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

As a note, Malin discloses that the high compression members, such as those indicated by reference numeral (72), contact the base of the opposite profile. Therefore, the recitation that “the substantially flat facing side surface of the front zipper profile abuts the substantially fiat facing side surface of the back zipper profile” is met.

Regarding claims 28-30, Malin discloses the claimed invention, as discussed above, except for the facing side surface of the front zipper profile being wider than the attaching side surface. It would have been an obvious matter of design choice to make the facing side surface of the Malin front zipper profile wider than the attaching side surface, since such a modification would have involved a mere change in the size of a

component. A change in size is generally recognized as being within the level of ordinary skill in the art.

To the degree claims 31-33 can be understood, Malin shows that it is known in the art to provide no air gap between the attaching side surfaces of front and back zipper profiles and a corresponding portion of the other attaching side surface (i.e., the bag walls). See Fig. 5.

9. Claims 8, 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin and U.S. Patent No. 3,416,199 to Imamura.

Malin discloses the claimed device, as discussed above, except it is unclear if the top edges of the male profiles are rounded. Imamura teaches that it is known in the art to provide a rounded, top edge on male profiles. It would have been an obvious matter of design choice to make the top edge of the Malin male profiles rounded, as taught by Imamura. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results.

10. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin and U.S. Patent No. 5,215,380 to Custer et al.

Malin discloses the claimed device except for the step of guiding the edges of the zipper profiles to a desired location between first and second bag films with guides. Custer et al. discloses that it is known in the art to guide an analogous zipper profiles to a desired location between first and second bag films using guides. It would have been

obvious to one having ordinary skill in the art at the time the invention was made to guide the zipper profiles Malin to a desired location between first and second bag films using guides as taught by Custer et al. for the purpose of assuring proper application of the zipper profiles to the first and second bag films.

Regarding claim 27, Malin and Custer et al. disclose the device, as discussed above, except for the guides having ends that are inverted arrow shaped. It would have been an obvious matter of design choice to make the ends of the Custer et al. guides an inverted arrow shape of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. Applicant's remarks filed 09/27/2006 and 09/16/2008 inadequately traverse the Examiner's statement of obvious design choice by failing to indicate the **unexpected advantages** of guides having ends with an inverted arrow shape. Therefore, the Examiner's statement of obvious design choice is taken to be admitted prior art because applicant's traverse was inadequate. It is brought to applicant's attention that in certain circumstances where appropriate, an Examiner may take official notice of facts not in the record or rely on "common knowledge" in making a rejection, however such rejections should be judiciously applied (MPEP 2144.03).

11. Claims 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin and U.S. Patent No. 3,410,327 to Ausnit.

To the degree the claims can be understood, Malin discloses the claimed device except for the side surfaces of the joined front back zipper profiles take the shape of an

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arrow. Ausnit discloses that it is known in the art to provide the side surfaces of joined front and back zipper profiles in an arrow shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the side surfaces of the joined front back zipper profiles of Malin with the shape of an arrow, as in Ausnit, since a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results.

### ***Allowable Subject Matter***

12. Claims 5, 13 and 21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

13. Applicant's arguments with respect to claims 1, 2, 4, 5, 8-10, 12, 13, 16-18, 20, 21 and 24-36 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/  
Primary Examiner, Art Unit 3782